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HOUSE BILL 507

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO JUVENILE JUSTICE; AMENDING PROVISIONS OF THE
CHILDREN'S CODE REGARDING PLACEMENT OF CHILDREN, APPELLATE
PROCEDURES, DETENTION PROCEEDINGS AND PAROLE PROCEDURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993,
Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS. -- As used in the Children's Code:

A. "adult" means ~~[an individual]~~ a person who is
eighteen years of age or older;

B. "child" means ~~[an individual]~~ a person who is
less than eighteen years old;

C. "court", when used without further
qualification, means the children's court division of the
district court and includes the judge, special master or

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1 commissioner appointed pursuant to the provisions of the
2 Children's Code or supreme court rule;

3 D. "court appointed special advocate" or "CASA"
4 means a person appointed as a CASA, pursuant to the provisions
5 of the Children's Court Rules [~~and Forms~~], who assists the
6 court in determining the best interests of the child by
7 investigating the case and submitting a report to the court;

8 E. "custodian" means a person, other than a parent
9 or guardian, who exercises physical control, care or custody of
10 the child, including [~~any~~] an employee of a residential
11 facility or [~~any persons~~] a person providing out-of-home care;

12 F. "department" means the children, youth and
13 families department, unless otherwise specified;

14 G. "foster parent" means a person, including a
15 relative of the child, licensed or certified by the department
16 or a child placement agency to provide care for children in the
17 custody of the department or agency;

18 H. "guardian" means the person having the duty and
19 authority of guardianship;

20 I. "guardianship" means the duty and authority to
21 make important decisions in matters having a permanent effect
22 on the life and development of a child and to be concerned
23 about the child's general welfare and includes:

24 (1) the authority to consent to marriage, to
25 enlistment in the armed forces of the United States or to major

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1 medical, psychiatric and surgical treatment;

2 (2) the authority to represent the child in
3 legal actions and to make other decisions of substantial legal
4 significance concerning the child;

5 (3) the authority and duty of reasonable
6 visitation of the child;

7 (4) the rights and responsibilities of legal
8 custody when the physical custody of the child is exercised by
9 the child's parents, except when legal custody has been vested
10 in another person; and

11 (5) when the rights of the child's parents
12 have been terminated as provided for in the laws governing
13 termination of parental rights or when both of the child's
14 parents are deceased, the authority to consent to the adoption
15 of the child and to make any other decision concerning the
16 child that the child's parents could have made;

17 J. "guardian ad litem" means an attorney appointed
18 by the children's court to represent and protect the best
19 interests of the child in a court proceeding; provided that no
20 party or employee or representative of a party to the
21 proceeding shall be appointed to serve as a guardian ad litem;

22 K. "Indian child" means an unmarried person who is:

23 (1) less than eighteen years old;

24 (2) a member of an Indian tribe or is eligible
25 for membership in an Indian tribe; and

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1 (3) the biological child of a member of an
2 Indian tribe;

3 L. "Indian child's tribe" means:

4 (1) the Indian tribe in which an Indian child
5 is a member or eligible for membership; or

6 (2) in the case of an Indian child who is a
7 member or eligible for membership in more than one tribe, the
8 Indian tribe with which the Indian child has more significant
9 contacts;

10 M "judge", when used without further
11 qualification, means the judge of the court;

12 N. "legal custody" means a legal status created by
13 the order of the court or other court of competent jurisdiction
14 that vests in a person, department or agency the right to
15 determine where and with whom a child shall live; the right and
16 duty to protect, train and discipline the child and to provide
17 the child with food, shelter, education and ordinary and
18 emergency medical care; the right to consent to major medical,
19 psychiatric, psychological and surgical treatment and to the
20 administration of legally prescribed psychotropic medications
21 pursuant to the Children's Mental Health and Developmental
22 Disabilities Act; and the right to consent to the child's
23 enlistment in the armed forces of the United States, all
24 subject to the powers, rights, duties and responsibilities of
25 the guardian of the child and subject to any existing parental

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1 rights and responsibilities. [~~An individual~~] A person granted
2 legal custody of a child shall exercise the rights and
3 responsibilities as custodian personally, unless otherwise
4 authorized by the court entering the order;

5 0. "parent" or "parents" includes a biological or
6 adoptive parent if the biological or adoptive parent has a
7 constitutionally protected liberty interest in the care and
8 custody of the child. A parent retains all of the duties and
9 authority of guardianship and legal custody of the child,
10 unless otherwise limited or altered by court order;

11 P. "permanency plan" means a determination by the
12 court that the child's interest will be served best by:

13 (1) return to the parent;

14 (2) placement with a fit and willing person
15 who will [~~be the child's permanent guardian~~] provide a
16 permanent home for the child;

17 (3) placement for adoption after the parents'
18 rights have been relinquished or terminated or after a motion
19 has been filed to terminate parental rights;

20 (4) placement in the custody of the department
21 until the child reaches the age of majority, unless the child
22 is emancipated, pursuant to the Emancipation of Minors Act; or

23 (5) placement in the custody of the department
24 under a planned permanent living arrangement that meets the
25 department's definition of long-term foster care;

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1 Q. "person" means an individual or any other form
2 of entity recognized by law;

3 R. "preadoptive parent" means a person with whom a
4 child has been placed for adoption;

5 S. "tribal court" means:

6 (1) a court established and operated pursuant
7 to a code or custom of an Indian tribe; or

8 (2) any administrative body of an Indian tribe
9 that is vested with judicial authority;

10 T. "tribal court order" means a document issued by
11 a tribal court that is signed by an appropriate authority,
12 including a judge, governor or tribal council member, and that
13 orders an action that is within the tribal court's
14 jurisdiction; and

15 U. "tribunal" means any judicial forum other than
16 the court. "

17 Section 2. Section 32A-1-17 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 26, as amended) is amended to read:

19 "32A-1-17. APPEALS. --

20 A. ~~[Any]~~ A party may appeal from a judgment of the
21 court to the court of appeals in the manner provided by law.

22 The appeal shall be heard by the court of appeals upon the
23 files, records and transcript of the evidence of the court.

24 Absent an order of the appellate court, files and records that
25 are required to be kept confidential and closed to the public

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1 pursuant to any provision of the Children's Code shall be kept
2 confidential and closed to the public on appeal.

3 B. The appeal to the court of appeals does not stay
4 the judgment appealed from, but the court of appeals may order
5 a stay upon application and hearing consistent with the
6 provisions of the Children's Code if suitable provision is made
7 for the care and custody of the child. If the order appealed
8 from grants the legal custody of the child to or withholds it
9 from one or more of the parties to the appeal, the appeal shall
10 be heard at the earliest practicable time.

11 C. If the court of appeals does not dismiss the
12 petition and order the child released, it shall affirm the
13 court's judgment or it shall modify the court's judgment and
14 remand the child to the jurisdiction of the court for
15 disposition consistent with the appellate court's decision on
16 the appeal. ~~[Any]~~ A party may appeal to the supreme court in
17 the manner provided by law.

18 D. A child who has filed notice of appeal shall be
19 furnished a transcript of the proceedings, or as much of it as
20 is requested, without cost upon the filing of an affidavit that
21 the child or the person who is legally responsible for the care
22 and support of the child is financially unable to purchase the
23 transcript.

24 E. Appeals from the court to the court of appeals
25 shall proceed in accordance with time limits to be established

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1 by the supreme court; provided, that a children's court
2 attorney or a child may appeal a suppression of evidence order
3 issued by a court by filing an appeal within ten days after the
4 issuance of the suppression order.

5 F. Appeals from a tribal court order shall proceed
6 pursuant to tribal law to an appropriate tribal court."

7 Section 3. Section 32A-2-3 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 32, as amended) is amended to read:

9 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

10 A. "delinquent act" means an act committed by a
11 child that would be designated as a crime under the law if
12 committed by an adult, including the following offenses:

13 (1) an offense pursuant to municipal traffic
14 codes or the Motor Vehicle Code:

15 (a) [~~any~~] driving while under the
16 influence of intoxicating liquor or drugs;

17 (b) [~~any~~] failure to stop in the event
18 of an accident causing death, personal injury or damage to
19 property;

20 (c) [~~any~~] unlawful taking of a vehicle
21 or motor vehicle;

22 (d) [~~any~~] receiving or transferring of a
23 stolen vehicle or motor vehicle;

24 (e) [~~any~~] homicide by vehicle;

25 (f) [~~any~~] injuring or tampering with a

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1 vehicle;

2 (g) [~~any~~] altering or changing of an
3 engine number or other vehicle identification numbers;

4 (h) [~~any~~] altering or forging of a
5 driver's license or permit or any making of a fictitious
6 license or permit;

7 (i) reckless driving;

8 (j) driving with a suspended or revoked
9 license; or

10 (k) [~~any~~] an offense punishable as a
11 felony;

12 (2) buying, attempting to buy, receiving,
13 possessing or being served any alcoholic liquor or being
14 present in a licensed liquor establishment, other than a
15 restaurant or a licensed retail liquor establishment, except in
16 the presence of the child's parent, guardian, custodian or
17 adult spouse. As used in this paragraph, "restaurant" means
18 [~~any~~] an establishment where meals are prepared and served
19 primarily for on-premises consumption and that has a dining
20 room, a kitchen and the employees necessary for preparing,
21 cooking and serving meals. "Restaurant" does not include
22 [~~establishments~~] an establishment, as defined in regulations
23 promulgated by the director of the special investigations
24 division of the department of public safety, that [~~serve~~]
25 serves only hamburgers, sandwiches, salads and other fast

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1 foods;

2 (3) [~~any~~] a felony violation of the provisions
3 of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations
4 adopted by the state game commission that relate to the time,
5 extent, means or manner that game animals, birds or fish may be
6 hunted, taken, captured, killed, possessed, sold, purchased or
7 shipped and for which a fine may be imposed or a civil damage
8 awarded;

9 (4) [~~any~~] a violation of Section 30-29-2 NMSA
10 1978, regarding the illegal use of a glue, aerosol spray
11 product or other chemical substance;

12 (5) [~~any~~] a violation of the Controlled
13 Substances Act;

14 (6) escape from the custody of a law
15 enforcement officer or a juvenile probation or parole officer
16 or from any placement made by the department by a child who has
17 been adjudicated a delinquent child; [~~or~~]

18 (7) [~~any~~] a violation of Section 30-15-1.1
19 NMSA 1978 regarding unauthorized graffiti on personal or real
20 property; or

21 (8) a violation of an order of protection
22 issued pursuant to the provisions of the Family Violence
23 Protection Act;

24 B. "delinquent child" means a child who has
25 committed a delinquent act;

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1 C. "delinquent offender" means a delinquent child
2 who is subject to juvenile sanctions only and who is not a
3 youthful offender or a serious youthful offender;

4 D. "detention facility" means a place where a child
5 may be detained under the Children's Code pending court hearing
6 and does not include a facility for the care and rehabilitation
7 of an adjudicated delinquent child;

8 E. "felony" means an act that would be a felony if
9 committed by an adult;

10 F. "misdemeanor" means an act that would be a
11 misdemeanor or petty misdemeanor if committed by an adult;

12 G. "restitution" means financial reimbursement by
13 the child to the victim or community service imposed by the
14 court and is limited to easily ascertainable damages for injury
15 to or loss of property, actual expenses incurred for medical,
16 psychiatric and psychological treatment for injury to a person
17 and lost wages resulting from physical injury, which are a
18 direct and proximate result of a delinquent act. "Restitution"
19 does not include reimbursement for damages for mental anguish,
20 pain and suffering or other intangible losses. As used in this
21 subsection, "victim" means ~~[any]~~ a person who is injured or
22 suffers damage of any kind by an act that is the subject of a
23 complaint or referral to law enforcement officers or juvenile
24 probation authorities. Nothing contained in this definition
25 limits or replaces the provisions of Subsections A and B of

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1 Section 32A-2-27 NMSA 1978;

2 H. "serious youthful offender" means an individual
3 fifteen to eighteen years of age who is charged with and
4 indicted or bound over for trial for first degree murder. A
5 "serious youthful offender" is not a delinquent child as
6 defined pursuant to the provisions of this section; and

7 I. "youthful offender" means a delinquent child
8 subject to adult or juvenile sanctions who is:

9 (1) fourteen to eighteen years of age at the
10 time of the offense and who is adjudicated for at least one of
11 the following offenses:

12 (a) second degree murder, as provided in
13 Section 30-2-1 NMSA 1978;

14 (b) assault with intent to commit a
15 violent felony, as provided in Section 30-3-3 NMSA 1978;

16 (c) kidnapping, as provided in Section
17 30-4-1 NMSA 1978;

18 (d) aggravated battery, as provided in
19 Subsection C of Section 30-3-5 NMSA 1978;

20 (e) aggravated battery upon a peace
21 officer, as provided in Subsection C of Section 30-22-25 NMSA
22 1978;

23 (f) shooting at a dwelling or occupied
24 building or shooting at or from a motor vehicle, as provided in
25 Section 30-3-8 NMSA 1978;

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1 (g) dangerous use of explosives, as
2 provided in Section 30-7-5 NMSA 1978;

3 (h) criminal sexual penetration, as
4 provided in Section 30-9-11 NMSA 1978;

5 (i) robbery, as provided in Section
6 30-16-2 NMSA 1978;

7 (j) aggravated burglary, as provided in
8 Section 30-16-4 NMSA 1978;

9 (k) aggravated arson, as provided in
10 Section 30-17-6 NMSA 1978; or

11 (l) abuse of a child that results in
12 great bodily harm or death to the child, as provided in Section
13 30-6-1 NMSA 1978;

14 (2) fourteen to eighteen years of age at the
15 time of the offense and adjudicated for any felony offense and
16 who has had three prior, separate felony adjudications within a
17 three-year time period immediately preceding the instant
18 offense. The felony adjudications relied upon as prior
19 adjudications shall not have arisen out of the same transaction
20 or occurrence or series of events related in time and location.
21 Successful completion of consent decrees are not considered a
22 prior adjudication for the purposes of this paragraph; or

23 (3) fourteen years of age and adjudicated for
24 first degree murder, as provided in Section 30-2-1 NMSA 1978. "

25 Section 4. Section 32A-2-5 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 34, as amended) is amended to read:

2 "32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--
3 ESTABLISHMENT-- JUVENILE PROBATION AND PAROLE OFFICERS-- POWERS
4 AND DUTIES. --

5 A. Juvenile probation and parole services shall be
6 provided by the department.

7 B. To carry out the objectives and provisions of
8 the Delinquency Act, but subject to its limitations, the
9 department has the power and duty to:

10 (1) receive and examine complaints and
11 allegations that a child is a delinquent child for the purpose
12 of considering beginning a proceeding pursuant to the
13 provisions of the Delinquency Act;

14 (2) make case referrals for services as appear
15 appropriate or desirable;

16 (3) make predisposition studies and
17 assessments and submit reports and recommendations to the
18 court;

19 (4) supervise and assist a child placed on
20 probation or parole or under supervision by court order or by
21 the juvenile parole board;

22 (5) give notice to any individual who has been
23 the subject of a petition filed pursuant to the provisions of
24 the Delinquency Act of the sealing of that individual's records
25 in accordance with that act;

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1 (6) informally dispose of up to three
2 misdemeanor charges brought against a child within two years;

3 (7) give notice to the children's court
4 attorney of the receipt of any felony complaint and of any
5 recommended adjustment of such felony complaint;

6 (8) identify an Indian child for the purpose
7 of contacting the Indian child's tribe in delinquency cases;
8 and

9 (9) contact an Indian child's tribe to consult
10 and exchange information for the purpose of preparing a
11 predisposition report when commitment or placement of an Indian
12 child is contemplated or has been ordered and indicate in the
13 report the name of the person contacted in the Indian child's
14 tribe and the results of the contact.

15 C. A juvenile probation and parole officer does not
16 have the powers of a law enforcement officer. A juvenile
17 probation and parole officer, upon securing a court order
18 pursuant to the provisions of Section 32A-1-12 NMSA 1978, may
19 take into physical custody and place in detention a child who
20 is under supervision as a delinquent child or as a youthful
21 offender when there is reasonable cause to believe that the
22 child has violated the conditions of his probation or that the
23 child may leave the jurisdiction of the court. Taking a child
24 into custody under this subsection is subject to and shall
25 proceed in accordance with the provisions of the Delinquency

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1 Act relating to custody and detention procedures and criteria."

2 Section 5. Section 32A-2-10 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 39) is amended to read:

4 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY. --

5 A. A person taking a child into custody shall, with
6 all reasonable speed:

7 (1) release the child to the child's parent,
8 guardian or custodian and issue verbal counsel or warning as
9 may be appropriate;

10 (2) release the child to the child's parent,
11 guardian or custodian upon their written promise to bring the
12 child before the court when requested by the court [~~and~~]. If
13 the parent, guardian or custodian fails, when requested, to
14 bring the child before the court as promised, the court may
15 order the child taken into custody and brought before the
16 court;

17 (3) deliver the child to a place of detention
18 as provided in Section [~~32-2-11~~] 32A-2-12 NMSA 1978;

19 (4) deliver the child to a medical facility,
20 if available, if the child is believed to be suffering from a
21 serious illness that requires prompt treatment or prompt
22 diagnosis; or

23 (5) deliver the child to an evaluation
24 facility, if available, if the person taking the child into
25 custody has reasonable grounds to believe the child presents a

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1 likelihood of serious harm to himself or others or is suffering
2 from some other serious mental condition or illness that
3 requires prompt treatment or prompt diagnosis.

4 B. When an alleged delinquent child is delivered to
5 a place of detention as provided in Section ~~[32-2-12]~~ 32A-2-12
6 NMSA 1978, ~~[a department designee, prior to the placing of the~~
7 ~~child in detention, shall review the need for detention and~~
8 ~~shall release the child from custody unless detention is~~
9 ~~appropriate under criteria set forth in the Delinquency Act or~~
10 ~~has been ordered by the court pursuant to those criteria]~~ only
11 a department employee or a trained county detention
12 professional designated by the department may place the child
13 in detention, in accordance with the criteria for detention set
14 forth in Section 32A-2-11 NMSA 1978. If the criteria for
15 detention of an alleged delinquent child are not met, the child
16 shall be released from custody.

17 C. If a child is taken into custody and is not
18 released to the child's parent, guardian or custodian, the
19 person taking the child into custody shall give written notice
20 thereof as soon as possible, and in no case later than
21 twenty-four hours, to the child's parent, guardian or custodian
22 and to the court, together with a statement of the reason for
23 taking the child into custody.

24 D. In all cases when a child is taken into custody,
25 the child shall be released to the child's parent, guardian or

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1 custodian in accordance with the conditions and time limits set
2 forth in the Children's Court Rules [~~and Forms~~]. "

3 Section 6. Section 32A-2-11 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 40) is amended to read:

5 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN. --

6 A. Unless ordered by the court pursuant to the
7 provisions of the Delinquency Act, a child taken into custody
8 for [a] an alleged delinquent act shall not be placed in
9 detention [~~prior to the court's disposition unless probable~~
10 ~~cause exists to believe that:~~

11 ~~(1) detention of the child is necessary to~~
12 ~~protect the community;~~

13 ~~(2) the child will run away or be taken away~~
14 ~~so as to be unavailable for proceedings of the court or its~~
15 ~~officers;~~

16 ~~(3) the child will commit injury to others; or~~

17 ~~(4) if not detained, the child will cause~~
18 ~~injury to himself or be subject to injury by others] unless a~~

19 detention risk assessment instrument is completed and a

20 determination is made at a detention hearing that the child:

21 (1) poses a substantial risk of harm to
22 himself;

23 (2) poses a substantial risk of harm to
24 others; or

25 (3) has previously demonstrated that he may

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1 leave the jurisdiction of the court.

2 B. The criteria for detention in this section shall
3 govern the decisions of all persons responsible for determining
4 whether detention is appropriate prior to ~~[the court's~~
5 ~~disposition~~

6 ~~C. The department shall promulgate guidelines by~~
7 ~~January 1, 1994 to implement the criteria for detention set~~
8 ~~forth in Subsection A of this section and shall collect data~~
9 ~~regarding the application of the criteria] a detention hearing,~~
10 based upon review of the detention risk assessment instrument.

11 C. The department shall develop and implement a
12 detention risk assessment instrument. The department shall
13 collect and analyze data regarding the application of the
14 detention risk assessment instrument. Beginning January 1,
15 2004, the department shall provide the legislature with an
16 annual written report with respect to its collection and
17 analysis of data regarding the application of the detention
18 risk assessment instrument."

19 Section 7. Section 32A-2-12 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 41) is amended to read:

21 "32A-2-12. PLACEMENT OR DETENTION. --

22 A. A child alleged to be a delinquent child may be
23 placed or detained, pending a court hearing, in any of the
24 following places:

25 (1) a licensed foster home or a home otherwise

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1 authorized under the law to provide foster or group care;

2 (2) a facility operated by a licensed child
3 welfare services agency;

4 (3) a shelter-care facility provided for in
5 the Children's Shelter Care Act or a detention facility
6 certified by the department for children alleged to be
7 delinquent children; or

8 (4) any other suitable place, other than a
9 facility for the long-term care and rehabilitation of
10 delinquent children to which children adjudicated as delinquent
11 may be confined [~~under~~] pursuant to Section [32-2-19] 32A-2-19
12 NMSA 1978, designated by the court and which meets the
13 standards for detention facilities [~~under~~] pursuant to the
14 Children's Code and federal law.

15 B. A child alleged to be a youthful offender may be
16 detained, pending a court hearing, in any of the following
17 places:

18 (1) a detention facility, licensed by the
19 department, for children alleged to be delinquent children;

20 (2) any other suitable place, other than a
21 facility for the long-term care and rehabilitation of
22 delinquent children to which children adjudicated as delinquent
23 children may be confined pursuant to Section 32A-2-19 NMSA
24 1978, designated by the court and that meets the standards for
25 detention facilities pursuant to the Children's Code and

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1 federal law.

2 C. A child alleged to be a youthful offender who is
3 violent toward staff or other residents in a detention facility
4 may be transferred and detained, pending a court hearing, in a
5 county jail. In the event that a child is detained in a jail,
6 the director of the jail shall presume that the child is
7 vulnerable to victimization by inmates within the adult
8 population because of his age, and shall take measures to
9 provide protection to the child. However, provision of
10 protective measures shall not result in diminishing a child's
11 civil rights to less than those existing for an incarcerated
12 adult.

13 D. A child who has previously been incarcerated as
14 an adult or a person older than eighteen years of age shall not
15 be detained in a juvenile detention facility or a facility for
16 the long-term care and rehabilitation of delinquent children,
17 but may be detained in a county jail. In the event that a
18 child is detained in a jail, the director of the jail shall
19 presume that the child is vulnerable to victimization by
20 inmates within the adult population because of his age, and
21 shall take measures to provide protection to the child.
22 However, provision of protective measures shall not result in
23 diminishing a child's civil rights to less than those existing
24 for an incarcerated adult.

25 [~~B.~~] E. A child alleged to be a serious youthful

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1 offender may be detained pending a court hearing in any of the
2 following places, prior to arraignment in metropolitan,
3 magistrate or district court:

4 (1) a detention facility, licensed by the
5 department, for children alleged to be delinquent children;

6 (2) any other suitable place, other than a
7 facility for the long-term care and rehabilitation of
8 delinquent children to which children adjudicated as delinquent
9 children may be confined [~~under~~] pursuant to Section [32-2-19]
10 32A-2-19 NMSA 1978, designated by the court which meets the
11 standards for detention facilities [~~under~~] pursuant to the
12 Children's Code and federal law; or

13 (3) a county jail, if a facility in Paragraph
14 (1) or (2) of this subsection is not appropriate. In the event
15 that a child is detained in a jail, the director of the
16 [~~facility~~] jail shall presume that the child is vulnerable to
17 victimization by [~~detainees~~] inmates within the adult
18 population because of his age and shall take measures to
19 provide protection to the child. However, [~~no such protective~~
20 ~~measure should~~] provision of protective measures shall not
21 result in diminishing a child's civil rights to less than those
22 existing for an incarcerated adult."

23 Section 8. Section 32A-2-13 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 42) is amended to read:

25 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED

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1 CHILDREN-- PROBABLE CAUSE DETERMINATION-- COURT DETERMINATION--
2 DISPOSITION. --

3 A. When a child who has been taken into custody is
4 not released but is detained:

5 (1) a judicial determination of probable cause
6 shall be made by a judge or special master or magistrate within
7 [~~forty-eight~~] twenty-four hours, including Saturdays, Sundays
8 and legal holidays, except for children taken into custody
9 under an arrest warrant pursuant to the Children's Court Rules
10 [~~and Forms~~]. A statement by a law enforcement officer, which
11 shall include the charges, may be the basis of a probable cause
12 determination. The probable cause determination shall be
13 nonadversarial, may be held in the absence of the child and
14 counsel and may be conducted by telephone. If the court finds
15 no probable cause to believe the child committed an offense,
16 the child shall be released;

17 (2) a petition shall be filed within [~~forty-~~
18 ~~eight~~] twenty-four hours from the time the child is taken into
19 custody, excluding Saturdays, Sundays and legal holidays, and
20 if not filed within the stated time, the child shall be
21 released; and

22 (3) a detention hearing shall be held within
23 twenty-four hours, excluding Saturdays, Sundays and legal
24 holidays, from the time of filing the petition to determine
25 whether continued detention is required pursuant to the

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1 criteria established by the Children's Code.

2 B. The judge may appoint one or more persons to
3 serve as special master on a full- or part-time basis for the
4 purpose of holding detention hearings. A juvenile probation
5 and parole officer shall not be appointed as a special master.
6 The judge shall approve all contracts with special masters and
7 shall fix their hourly compensation, subject to the approval of
8 the director of the administrative office of the courts.

9 C. Notice of the detention hearing, either oral or
10 written, stating the time, place and purpose of the hearing
11 shall be given by the person designated by the court to the
12 child's parents, guardian or custodian, if they can be found,
13 and to the child. The department shall be provided with
14 reasonable oral or written notification and an opportunity to
15 be heard. At any hearing held pursuant to this subsection, the
16 department may appear as a party.

17 D. At the commencement of the detention hearing,
18 the judge or special master shall advise the parties of their
19 basic rights provided in the Children's Code and shall appoint
20 counsel, guardians and custodians, if appropriate.

21 E. If the judge or special master finds that the
22 child's detention is appropriate under the criteria established
23 by the Children's Code, the judge or special master shall order
24 detention in an appropriate facility in accordance with the
25 Children's Code.

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1 F. If the judge or special master finds that
2 detention of the child is not appropriate under the criteria
3 established by the Children's Code, the judge or special master
4 shall order the release of the child, but, in so doing, may
5 order one or more of the following conditions to meet the
6 individual needs of the child:

7 (1) place the child in the custody of a
8 parent, guardian or custodian or under the supervision of an
9 agency agreeing to supervise the child;

10 (2) place restrictions on the child's travel,
11 association with other persons or place of abode during the
12 period of the child's release; or

13 (3) impose any other condition deemed
14 reasonably necessary and consistent with the criteria for
15 detaining children established by the Children's Code,
16 including a condition requiring that the child return to
17 custody as required.

18 G. An order releasing a child on any conditions
19 specified in this section may at any time be amended to impose
20 additional or different conditions of release or to return the
21 child to custody or detention for failure to conform to the
22 conditions originally imposed.

23 H. At the detention hearing, all relevant and
24 material evidence helpful in determining the need for detention
25 may be admitted by the judge or special master even though it

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1 would not be admissible in a hearing on the petition.

2 I. If the child is not released at the detention
3 hearing and a parent, guardian or custodian was not notified of
4 the hearing and did not appear or waive appearance at the
5 detention hearing, the judge or special master shall rehear the
6 detention matter without unnecessary delay upon the filing of
7 an affidavit stating the facts and a motion for rehearing.

8 J. If a child is not released at the detention
9 hearing, the child shall be reevaluated within ten days of the
10 detention hearing, in conjunction with a pre-trial conference.

11 K. If the judge or special master finds that
12 detention of the child is appropriate, but the child is not
13 placed in a facility within ten days after the detention
14 hearing, the child shall be released and placed under
15 appropriate supervision, so long as the child does not pose a
16 substantial risk of harm to himself or others."

17 Section 9. Section 32A-2-14 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 43) is amended to read:

19 "32A-2-14. BASIC RIGHTS. --

20 A. A child subject to the provisions of the
21 Delinquency Act is entitled to the same basic rights as an
22 adult, except as otherwise provided in the Children's Code.

23 B. If after due notice to the parent, guardian or
24 custodian and after a hearing determining indigency, the
25 parent, guardian or custodian is declared indigent by the

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1 court, the public defender shall represent the child. If the
2 court finds that the parent, guardian or custodian is
3 financially able to pay for an attorney but is unwilling to do
4 so, the court shall order the parent, guardian or custodian to
5 reimburse the state for public defender representation.

6 C. No person subject to the provisions of the
7 Delinquency Act who is alleged or suspected of being a
8 delinquent child shall be interrogated or questioned without
9 first advising the child of the child's constitutional rights
10 and securing a knowing, intelligent and voluntary waiver.

11 D. Before any statement or confession may be
12 introduced at a trial or hearing when a child is alleged to be
13 a delinquent child, the state shall prove that the statement or
14 confession offered in evidence was elicited only after a
15 knowing, intelligent and voluntary waiver of the child's
16 constitutional rights was obtained.

17 E. In determining whether the child knowingly,
18 intelligently and voluntarily waived the child's rights, the
19 court shall consider the following factors:

- 20 (1) the age and education of the respondent;
21 (2) whether [~~or not~~] the respondent is in
22 custody;
23 (3) the manner in which the respondent was
24 advised of his rights;
25 (4) the length of questioning and

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1 circumstances under which the respondent was questioned;

2 (5) the condition of the quarters where the
3 respondent was being kept at the time he was questioned;

4 (6) the time of day and the treatment of the
5 respondent at the time that he was questioned;

6 (7) the mental and physical condition of the
7 respondent at the time that he was questioned; and

8 (8) whether [~~or not~~] the respondent had the
9 counsel of an attorney, friends or relatives at the time of
10 being questioned.

11 F. Notwithstanding any other provision to the
12 contrary, no confessions, statements or admissions may be
13 introduced against a child under the age of thirteen years on
14 the allegations of the petition. There is a rebuttable
15 presumption that any confessions, statements or admissions made
16 by a child thirteen or fourteen years old to a person in a
17 position of authority are inadmissible.

18 G. An extrajudicial admission or confession made by
19 the child out of court is insufficient to support a finding
20 that the child committed the delinquent acts alleged in the
21 petition unless it is corroborated by other evidence.

22 H. The child and the parent, guardian or custodian
23 of the child shall be advised by the court or its
24 representative that the child shall be represented by counsel
25 at all stages of the proceedings on a delinquency petition. If

1 counsel is not retained for the child or if it does not appear
2 that counsel will be retained, counsel shall be appointed for
3 the child.

4 I. A child under the age of thirteen alleged or
5 adjudicated to be a delinquent child shall not be fingerprinted
6 or photographed for identification purposes without obtaining a
7 court order.

8 J. The court, at any stage of the proceeding on a
9 petition under the Children's Code, may appoint a guardian ad
10 litem for a child who is a party if the child has no parent,
11 guardian or custodian appearing on behalf of the child or if
12 the parent's, guardian's or custodian's interests conflict with
13 those of the child. A party to the proceeding or an employee
14 or representative of a party shall not be appointed as guardian
15 ad litem.

16 K. The court shall appoint a guardian for a child
17 if the court determines that the child does not have a parent
18 or a legally appointed guardian in a position to exercise
19 effective guardianship. No officer or employee of an agency
20 that is vested with the legal custody of the child shall be
21 appointed guardian of the child except when parental rights
22 have been terminated and the agency is authorized to place the
23 child for adoption.

24 L. A person afforded rights under the Delinquency
25 Act shall be advised of those rights at that person's first

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1 appearance before the court on a petition under that act.

2 M A serious youthful offender who is detained
3 prior to trial in an adult facility has a right to bail as
4 provided under SCRA 1986, Rule 5-401. A child held in a
5 juvenile facility designated as a place of detention prior to
6 adjudication does not have a right to bail but may be released
7 pursuant to the provisions of the Delinquency Act.

8 N. The provisions of the Delinquency Act shall not
9 be interpreted to limit the right of a child to petition a
10 court for a writ of habeas corpus."

11 Section 10. Section 32A-2-19 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 48, as amended) is amended to read:

13 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
14 OFFENDER. --

15 A. At the conclusion of the dispositional hearing,
16 the court may make and include in the dispositional judgment
17 its findings on the following:

18 (1) the interaction and interrelationship of
19 the child with the child's parents, siblings and any other
20 person who may significantly affect the child's best interests;

21 (2) the child's adjustment to his home, school
22 and community;

23 (3) the mental and physical health of all
24 individuals involved;

25 (4) the wishes of the child as to his

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2 (5) the wishes of the child's parents as to
3 the child's custody;

4 (6) whether there exists a relative of the
5 child or other individual who, after study by the department,
6 is found to be qualified to receive and care for the child;

7 (7) the availability of services recommended
8 in the predisposition report; and

9 (8) the ability of the parents to care for the
10 child in the home.

11 B. If a child is found to be delinquent, the court
12 may impose a fine not to exceed the fine that could be imposed
13 if the child were an adult and may enter its judgment making
14 any of the following dispositions for the supervision, care and
15 rehabilitation of the child:

16 (1) any disposition that is authorized for the
17 disposition of a neglected or abused child, in accordance with
18 the Abuse and Neglect Act;

19 (2) transfer legal custody to the department,
20 an agency responsible for the care and rehabilitation of
21 delinquent children, which shall receive the child at a
22 facility designated by the secretary of the department as a
23 juvenile reception facility. The department shall thereafter
24 determine the appropriate placement, supervision and
25 rehabilitation program for the child. The judge may include

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1 recommendations for placement of the child. Commitments are
2 subject to limitations and modifications set forth in Section
3 32A-2-23 NMSA 1978. The types of commitments include:

4 (a) a short-term commitment of one year,
5 followed by a period of parole for ninety days;

6 (b) a long-term commitment for no more
7 than two years in a long-term facility for the care and
8 rehabilitation of adjudicated delinquent children;

9 (c) if the child is a delinquent
10 offender who committed one of the criminal offenses set forth
11 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to
12 age twenty-one, unless sooner discharged; or

13 (d) if the child is a youthful offender,
14 a commitment to age twenty-one, unless sooner discharged;

15 (3) place the child on probation under those
16 conditions and limitations as the court may prescribe;

17 (4) place the child in a local detention
18 facility that has been certified in accordance with the
19 provisions of Section 32A-2-4 NMSA 1978 for a period not to
20 exceed fifteen days within a three hundred sixty-five day time
21 period;

22 (5) if a child is found to be delinquent
23 solely on the basis of Paragraph (3) of Subsection A of Section
24 32A-2-3 NMSA 1978, the court shall only enter a judgment
25 placing the child on probation or ordering restitution or

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1 imposing a fine not to exceed the fine that could be imposed if
2 the child were an adult or any combination of these
3 dispositions; or

4 (6) if a child is found to be delinquent
5 solely on the basis of Paragraph (2), (4) or (5) of Subsection
6 A of Section 32A-2-3 NMSA 1978, the court may make any
7 disposition provided by this section and may enter its judgment
8 placing the child on probation and, as a condition of
9 probation, transfer custody of the child to the department for
10 a period not to exceed six months without further order of the
11 court; provided that this transfer shall not be made unless the
12 court first determines that the department is able to provide
13 or contract for adequate and appropriate treatment for the
14 child and that the treatment is likely to be beneficial.

15 C. When the child is an Indian child, the Indian
16 child's cultural needs shall be considered in the dispositional
17 judgment and reasonable access to cultural practices and
18 traditional treatment shall be provided.

19 D. No child found to be delinquent shall be
20 committed or transferred to a penal institution or other
21 facility used for the execution of sentences of persons
22 convicted of crimes.

23 E. Whenever the court vests legal custody in an
24 agency, institution or department, it shall transmit with the
25 dispositional judgment copies of the clinical reports,

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1 predisposition study and report and other information it has
2 pertinent to the care and treatment of the child.

3 F. Prior to any child being placed in the custody
4 of the department, the department shall be provided with
5 reasonable oral or written notification and an opportunity to
6 be heard.

7 G. In addition to any other disposition pursuant to
8 this section or any other penalty provided by law, if a child
9 fifteen years of age or older is adjudicated delinquent on the
10 basis of Paragraph (2), (4) or (5) of Subsection A of Section
11 32A-2-3 NMSA 1978, the child's driving privileges may be denied
12 or the child's driver's license may be revoked for a period of
13 ninety days. For a second or a subsequent adjudication, the
14 child's driving privileges may be denied or the child's
15 driver's license revoked for a period of one year. Within
16 twenty-four hours of the dispositional judgment, the court may
17 send to the motor vehicle division of the taxation and revenue
18 department the order adjudicating delinquency. Upon receipt of
19 an order from the court adjudicating delinquency, the director
20 of the motor vehicle division of the taxation and revenue
21 department may revoke or deny the delinquent's driver's license
22 or driving privileges. Nothing in this section may prohibit
23 the delinquent from applying for a limited driving privilege
24 pursuant to Section 66-5-35 NMSA 1978, and nothing in this
25 section precludes the delinquent's participation in an

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1 appropriate educational, counseling or rehabilitation program.

2 H. In addition to any other disposition pursuant to
3 this section or any other penalty provided by law, when a child
4 is adjudicated delinquent on the basis of Paragraph (7) of
5 Subsection A of Section 32A-2-3 NMSA 1978, the child shall
6 perform the mandatory community service set forth in Section
7 30-15-1.1 NMSA 1978. When a child fails to completely perform
8 the mandatory community service, the name and address of the
9 child's parent or legal guardian shall be published in a
10 newspaper of general circulation, accompanied by a notice that
11 he is the parent or legal guardian of a child adjudicated
12 delinquent for committing graffiti."

13 Section 11. Section 32A-2-20 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 49, as amended) is amended to read:

15 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

16 A. The court has the discretion to invoke either an
17 adult sentence or juvenile sanctions on a youthful offender.
18 The children's court attorney shall file a notice of intent to
19 invoke an adult sentence within ten working days of the filing
20 of the petition, provided that the court may extend the time
21 for filing of the notice of intent to invoke an adult sentence,
22 for good cause shown, prior to the adjudicatory hearing. A
23 preliminary hearing by the court or a hearing before a grand
24 jury shall be held, within ten days after the filing of the
25 intent to invoke an adult sentence, to determine whether

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1 probable cause exists to support the allegations contained in
2 the petition.

3 B. If the children's court attorney has filed a
4 notice of intent to invoke an adult sentence and the child is
5 adjudicated as a youthful offender, the court shall make the
6 following findings in order to invoke an adult sentence:

7 (1) the child is not amenable to treatment or
8 rehabilitation as a child in available facilities; and

9 (2) the child is not eligible for commitment
10 to an institution for the developmentally disabled or mentally
11 disordered.

12 C. In making the findings set forth in Subsection B
13 of this section, the judge shall consider the following
14 factors:

15 (1) the seriousness of the alleged offense;

16 (2) whether the alleged offense was committed
17 in an aggressive, violent, premeditated or willful manner;

18 (3) whether a firearm was used to commit the
19 alleged offense;

20 (4) whether the alleged offense was against
21 persons or against property, greater weight being given to
22 offenses against persons, especially if personal injury
23 resulted;

24 (5) the sophistication and maturity of the
25 child as determined by consideration of the child's home,

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1 environmental situation, emotional attitude and pattern of
2 living;

3 (6) the record and previous history of the
4 child;

5 (7) the prospects for adequate protection of
6 the public and the likelihood of reasonable rehabilitation of
7 the child by the use of procedures, services and facilities
8 currently available; and

9 (8) any other relevant factor, provided that
10 factor is stated on the record.

11 D. If a child has previously been sentenced as an
12 adult pursuant to the provisions of this section, there shall
13 be a rebuttable presumption that the child is not amenable to
14 treatment or rehabilitation as a child in available facilities.

15 [~~D.~~] E. If the court invokes an adult sentence, the
16 court may sentence the child to less than, but shall not
17 exceed, the mandatory adult sentence. A youthful offender
18 given an adult sentence shall be treated as an adult offender
19 and shall be transferred to the legal custody of an agency
20 responsible for incarceration of persons sentenced to adult
21 sentences. This transfer terminates the jurisdiction of the
22 court over the child with respect to the delinquent acts
23 alleged in the petition.

24 [~~E.~~] E. If a juvenile disposition is appropriate,
25 the court shall follow the provisions set forth in Section
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1 32A-2-19 NMSA 1978. A youthful offender may be subject to
2 extended commitment in the care of the department until the age
3 of twenty-one, pursuant to the provisions of Section 32A-2-23
4 NMSA 1978.

5 [F-] G. A fourteen to eighteen year old child
6 charged with first degree murder, but convicted of an offense
7 less than first degree murder, is subject to the dispositions
8 set forth in this section. "

9 Section 12. Section 32A-2-23 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 52, as amended) is amended to read:

11 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
12 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

13 A. A judgment transferring legal custody of an
14 adjudicated delinquent child to an agency responsible for the
15 care and rehabilitation of delinquent children divests the
16 court of jurisdiction at the time of transfer of custody,
17 unless the transfer of legal custody is for a commitment not
18 exceeding fifteen days pursuant to the provisions of Section
19 32A-2-19 NMSA 1978, in which case the court retains
20 jurisdiction, and:

21 (1) the juvenile parole board pursuant to the
22 Juvenile Parole Board Act has the exclusive power to parole or
23 release the child, subject to the provisions of Section 32A-7-8
24 NMSA 1978;

25 (2) the supervision of a child after release

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1 under Paragraph (1) of this subsection [~~may~~] shall be conducted
2 by the [~~juvenile parole board in conjunction with the~~
3 ~~department or any other suitable state agency or under any~~
4 ~~contractual arrangements the juvenile parole board deems~~
5 ~~appropriate; and~~] department;

6 (3) a child who completes a short-term
7 commitment of one year, upon his release shall be placed on
8 parole and supervised by the department for a period of ninety
9 days; and

10 [~~(3)~~] (4) the period of time a child absconds
11 from parole or probation supervision shall toll all time limits
12 for the requirement of filing a petition to revoke probation or
13 parole and shall toll the computation of the period of
14 probation or parole supervision pursuant to the provisions of
15 the Delinquency Act.

16 B. A judgment of probation or protective
17 supervision shall remain in force for an indeterminate period
18 not to exceed the term of commitment from the date entered.

19 C. A child shall be released by an agency and
20 probation or supervision shall be terminated by juvenile
21 probation and parole services or the agency providing
22 supervision when it appears that the purpose of the order has
23 been achieved before the expiration of the period of the
24 judgment. A release or termination and the reasons therefor
25 shall be reported promptly to the court in writing by the

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1 releasing authority.

2 D. Prior to the expiration of a long-term
3 commitment, as provided for in Section 32A-2-19 NMSA 1978, the
4 court may extend the judgment for additional periods of one
5 year until the child reaches the age of twenty-one if the court
6 finds that the extension is necessary to safeguard the welfare
7 of the child or the public interest.

8 E. Prior to the expiration of a judgment of
9 probation, the court may extend the judgment for an additional
10 period of one year until the child reaches the age of twenty-
11 one if the court finds that the extension is necessary to
12 protect the community or to safeguard the welfare of the child.

13 F. The court may dismiss a motion if it finds after
14 preliminary investigation that the motion is without substance.
15 If the court is of the opinion that the matter should be
16 reviewed, it may, upon notice to all necessary parties, proceed
17 to a hearing in the manner provided for hearings on petitions
18 alleging delinquency. The court may terminate a judgment if it
19 finds that the child is no longer in need of care, supervision
20 or rehabilitation or it may enter a judgment extending or
21 modifying the original judgment if it finds that action
22 necessary to safeguard the child or the public interest.

23 G. A child may make a motion to modify a children's
24 court or adult disposition within thirty days of the judge's
25 decision. If the court is of the opinion that the matter

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1 should be reviewed, it may, upon notice to all necessary
2 parties, proceed to a hearing in the manner provided for
3 hearings on petitions alleging delinquency. "

4 Section 13. Section 32A-2-26 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 55) is amended to read:

6 "32A-2-26. SEALING OF RECORDS. --

7 A. On motion by or on behalf of [~~an individual~~] a
8 person who has been the subject of a delinquency petition or on
9 the court's own motion, the court shall vacate its findings,
10 orders and judgments on the petition and order the legal and
11 social files and records of the court, probation services and
12 any other agency in the case sealed [~~and~~]. If requested in the
13 motion, the court shall also order law enforcement files and
14 records sealed. An order sealing records and files shall be
15 entered if the court finds that:

16 (1) two years have elapsed since the final
17 release of the [~~individual~~] person from legal custody and
18 supervision or two years have elapsed since the entry of any
19 other judgment not involving legal custody or supervision; and

20 (2) the [~~individual~~] person has not, within
21 the two years immediately prior to filing the motion, been
22 convicted of a felony or of a misdemeanor involving moral
23 turpitude or been found delinquent by a court and no proceeding
24 is pending seeking such a conviction or finding.

25 B. Reasonable notice of the motion shall be given

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to:

- (1) the children's court attorney;
- (2) the authority granting the release;
- (3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and
- (4) any other agency having custody of records or files subject to the sealing order.

C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted [~~and~~]. The court, law enforcement officers and departments and agencies shall reply, and the [~~individual~~] person may reply, to an inquiry that no record exists with respect to [~~such~~] the person. Copies of the sealing order shall be sent to each agency or official named in the order.

D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the court only:

- (1) upon motion by the [~~individual~~] person who is the subject of the records and only to those persons named in the motion; and
- (2) in its discretion, in an individual case, to any clinic, hospital or agency that has the [~~individual~~]

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1 person under care or treatment or to other persons engaged in
2 fact finding or research.

3 E. Any finding of delinquency or need of services
4 or conviction of a crime subsequent to the sealing order may at
5 the court's discretion be used by the court as a basis to set
6 aside the sealing order.

7 F. A person who has been the subject of a petition
8 filed pursuant to the provisions of the Delinquency Act shall
9 be notified in writing by the juvenile probation and parole
10 officer of the right to have records sealed at the expiration
11 of the disposition.

12 G. A person who is not the subject of a delinquency
13 petition or a person who is determined by the court not to be a
14 delinquent offender shall have his files and records
15 automatically sealed by the court.

16 H. If two years have elapsed since a person was
17 released from legal custody and supervision and the department
18 has not received any new allegations of delinquency regarding
19 the person, that person's files and records shall be
20 automatically sealed."

21 Section 14. Section 32A-2-29 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 58) is amended to read:

23 "32A-2-29. MOTOR VEHICLE CODE VIOLATIONS. --

24 A. The municipal, magistrate or metropolitan court
25 shall have original exclusive jurisdiction over all Motor

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1 Vehicle Code or ~~municipal~~ traffic code violations when the
2 person alleged to have committed the violation is a child, with
3 the exception of those violations contained in Paragraph (1) of
4 Subsection A of Section [~~32-2-3~~] 32A-2-3 NMSA 1978 and all
5 traffic offenses alleged to have been committed by the child
6 arising out of the same occurrence pursuant to Subsection B of
7 this section.

8 B. If the [~~children's~~] court acquires jurisdiction
9 over a child pursuant to any of those Motor Vehicle Code
10 violations contained in Paragraph (1) of Subsection A of
11 Section [~~32-2-3~~] 32A-2-3 NMSA 1978, it shall have jurisdiction
12 over all traffic offenses alleged to have been committed by the
13 child arising out of the same occurrence.

14 C. All traffic offenses which the child is found to
15 have committed by the ~~municipal~~, ~~magistrate~~ or ~~metropolitan~~
16 court or for which the child is adjudicated delinquent by the
17 children's court shall be subject to the reporting requirements
18 and the suspension and revocation provisions of the Motor
19 Vehicle Code and shall not be subject to the confidentiality
20 provisions of the Delinquency Act.

21 D. No tribunal may incarcerate [~~any~~] a child who
22 has been found guilty of any Motor Vehicle Code or ~~municipal~~
23 traffic code violations [~~without first securing the approval of~~
24 ~~the children's court.~~]"

25 Section 15. Section 32A-2-32 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 61) is amended to read:

2 "32A-2-32. CONFIDENTIALITY--RECORDS. --

3 A. All social records, including diagnostic
4 evaluation, psychiatric reports, medical reports, social
5 studies reports, pre-parole reports and supervision histories
6 obtained by the juvenile probation office, parole officers and
7 parole board or in possession of the department, are privileged
8 and shall not be disclosed directly or indirectly to the
9 public.

10 B. The records described in Subsection A of this
11 section shall be open to inspection only by:

- 12 (1) court personnel;
- 13 (2) court appointed special advocates;
- 14 (3) the child's attorney or guardian ad litem;
- 15 (4) department personnel;
- 16 (5) any local substitute care review board or
17 any agency contracted to implement local substitute care review
18 boards;
- 19 (6) corrections department personnel;
- 20 (7) law enforcement officials;
- 21 (8) district attorneys;
- 22 (9) any state government social services
23 agency in any state;
- 24 (10) those persons or entities of a child's
25 Indian tribe specifically authorized to inspect such records

. 143610. 1

underscored material = new
[bracketed material] = delete

1 pursuant to the federal Indian Child Welfare Act of 1978 or any
2 regulations promulgated thereunder;

3 (11) tribal juvenile justice system and social
4 service representatives;

5 (12) a foster parent, if the records are those
6 of a child currently placed with that foster parent or of a
7 child being considered for placement with that foster parent
8 when the records concern the social, medical, psychological or
9 educational needs of the child;

10 (13) school personnel involved with the child
11 if the records concern the child's social or educational needs;

12 (14) health care or mental health
13 professionals involved in the evaluation or treatment of the
14 child, the child's parents, guardians or custodian or other
15 family members;

16 (15) representatives of the protection and
17 advocacy system, pursuant to the provisions of the federal
18 Developmental Disabilities Assistance and Bill of Rights Act
19 and the federal Protection and Advocacy for Mentally Ill
20 Individuals Amendments Act of 1991; and

21 (16) any other person or entity, by order of
22 the court, having a legitimate interest in the case or the work
23 of the court.

24 C. Whoever intentionally and unlawfully releases
25 any information or records closed to the public pursuant to

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underscored material = new
[bracketed material] = delete

1 this section or releases or makes other unlawful use of records
2 in violation of this section is guilty of a petty misdemeanor. "

3 Section 16. Section 32A-2-33 NMSA 1978 (being Laws 1999,
4 Chapter 216, Section 1) is amended to read:

5 "32A-2-33. CHILD IN POSSESSION OF A FIREARM ON SCHOOL
6 PREMISES-- DETENTION-- HEARING. --

7 A. If a public school administrator or employee has
8 reasonable cause to believe that a child is in possession of or
9 has been in possession of a firearm on school premises in
10 violation of [~~the federal Gun-Free Schools Act of 1994 or~~]
11 Section 30-7-2.1 NMSA 1978, the administrator or employee shall
12 immediately report the child's actions to a law enforcement
13 agency and the children, youth and families department.

14 B. Upon receipt of a report pursuant to Subsection
15 A of this section, the law enforcement agency [~~shall~~
16 ~~immediately~~] may conduct an investigation to determine if there
17 is probable cause to believe that the child possessed a firearm
18 on school premises.

19 C. If the law enforcement agency determines there
20 is probable cause to believe that the child possessed a firearm
21 on school premises, the law enforcement agency [~~shall~~
22 ~~immediately~~] may take the child into custody and deliver the
23 child to a detention facility licensed by the department.
24 After the child is delivered to a detention facility, the
25 department shall comply with the notification provisions set

. 143610. 1

underscored material = new
[bracketed material] = delete

1 forth in Subsection C of Section 32A-2-10 NMSA 1978. The child
2 shall be detained in the detention facility, pending a
3 detention hearing pursuant to the provisions of Section
4 32A-2-13 NMSA 1978.

5 D. As used in this section, "firearm" means any
6 weapon ~~[which]~~ that will or is designed to or may readily be
7 converted to expel a projectile by the action of an explosion;
8 the frame or receiver of any such weapon; or any firearm
9 muffler or firearm silencer. "Firearm" includes any handgun,
10 rifle or shotgun. "

11 Section 17. Section 32A-7-8 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 201) is amended to read:

13 "32A-7-8. PAROLE ELIGIBILITY. --

14 A. A child is eligible to appear before the
15 juvenile parole board forty days after the entry of a judgment
16 transferring legal custody to an agency for the care and
17 rehabilitation of delinquent children, unless recommended for
18 an earlier appearance by the agency responsible for such care
19 and rehabilitation.

20 B. In the event parole is denied, the child shall
21 be eligible for review sixty days thereafter.

22 C. In the event parole for a child is denied by the
23 juvenile parole board, but parole is recommended for the child
24 by the department, within ten days after the denial of parole
25 the department may transmit all records for review by the court

1 of the judicial district from which legal custody of the child
2 was transferred. The court shall have jurisdiction to review
3 the matter and issue an order regarding the child's prospective
4 parole.

5 [C-] D. The juvenile parole board may review the
6 case of any child upon its own motion at any time after parole
7 is denied.

8 [D-] E. The provisions of the Juvenile Parole Board
9 Act apply to all children who, on [~~the effective date of that~~
10 ~~act~~] July 1, 1993, are on parole or eligible to be placed on
11 parole with the same effect as if that act had been in effect
12 at the time they were placed on parole or became eligible to be
13 placed on parole. "

14 Section 18. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 2003.